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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 916

HOME TOWN FOODS, INC. AND FOREMOST DAIRIES, INC.,
Petitioners,

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, *Respondent.*

Brief of The Chamber of Commerce of the United States of America as Amicus Curiae

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STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America, hereinafter referred to as the National Chamber, is a federation of over 3,700 state and local chambers of commerce and local, state, and national trade and professional associations. The National Chamber has a direct membership of more than 33,000 business firms and an underlying membership of approximately 5,000,000 business firms and individuals. It is the largest association of business and professional organizations in the United States.

A significant number of members of the National Chamber utilize "Belo" type contracts in their employment re-

lationships. If the decision below is allowed to stand the opportunity to utilize such employment contracts providing for a fixed salary despite fluctuating hours of work for non-executive type employees will be substantially reduced. The National Chamber is particularly concerned that if the decision below is not reversed, the business community will not be permitted the fullest use of "Belo" type contracts authorized by Congress and this Court.

THE NEED FOR BELO CONTRACTS

Employers generally, as is true of Petitioners in the instant case, have varying numbers of employees who have a normal schedule of routine duties but who also have special responsibilities which require unpredictable and varying amounts of overtime work. Employees in some industries are particularly subject to unpredictable work schedules because of equipment breakdowns. Some employees, such as drivers on a scheduled run, must work longer hours when operations are hampered by bad weather; other employees may be laid off in such conditions. Employees designated as relief personnel work unpredictable overtime hours in addition to their normal duties. Loan company personnel often have routine office duties as well as protean outside collection responsibilities. Inside sales personnel in smaller establishments often work unpredictable overtime hours controlled more by customer demand than advance scheduling. Integral jobs in a long production chain involve substantial but unpredictable overtime hours when difficulties arise "up the line" and the work cannot be postponed because of a perishable product or immediate delivery commitments. Reasonable business exigencies require many employees to work hours which vary considerable from week to week.

Providing the reasonable security of a uniform weekly paycheck while meeting operational demands for excess hours of work of varying lengths is a common business

problem, a problem that recurs with sufficient frequency that Congress in 1949 saw fit to attempt to provide a solution. That solution is the so-called "Belo" provision.

THE VALUE TO EMPLOYEES OF BELO CONTRACTS

"Belo" contracts cannot be used to circumvent the minimum wage or maximum hour requirements of the Fair Labor Standards Act. The necessary safeguards are contained in Section 7(f), the Belo Provision, itself. The requirements that at least the statutory minimum wage plus at least one hundred fifty percent of the regular rate of pay for hours worked in excess of the statutory maximum be provided continue in full force even when "Belo type" agreements are sanctioned. Thus, employees are assured the full protection of the law even when employed under contracts of the type in question in the instant case.

It would appear that in the Secretary's view the only value or consideration offered employees by "Belo type" contracts is the opportunity to, with reasonable frequency, work less than forty hours a week. The Secretary would not permit such contracts unless this "short week" situation occurs. We contend that this "short week" requirement adds a limitation unjustified by the language of the statute, its legislative history or prior decisions of this Court.

A sufficient *quid pro quo* provided employees by such contractual arrangements lies in the assurance they receive of a regular salary which is increased by an amount at least equivalent to that required to compensate them for their average overtime work.

So long as the overtime varies and the employee is compensated on a salary basis equivalent to his average overtime, he loses nothing. He gains through the "Belo" arrangement the advantages of security and certainty so necessary to proper budget and personal financial plan-

ning. The value of such certainty to even middle income families cannot be underestimated.

THE ERROR BELOW

If a rigid hours-and overtime compensation plan is applied to such employees, substantial weekly variations in pay result. In such situations employers bear substantial additional clerical burdens in computing pay but more importantly, the employees in question face the insecurity of widely fluctuating pay checks. Such insecurity is unnecessary and neither the general intent nor the specific wording of the Fair Labor Standards Act requires it. The National Chamber supports the legal position set out by Petitioner in this case as the correct construction of the statute.

RESULT IF THE DECISION BELOW IS NOT REVERSED

As *amicus curiae* representing the interests of employers throughout the country who will be affected by the outcome of this case, the National Chamber urges that the decision of the Court of Appeals in this case if allowed to stand, will have the practical effect of abrogating Section 7(f) of the Act.

Outside the construction and agriculture industries, and industries where the availability of work is substantially dependent on weather conditions there are few regular, full-time employees who are frequently and unpredictably sent home with less than forty hours pay because of lack of work. The customary practice is to require that the employee at least stand by for the normal forty hours per week. This is to assure their availability for the work which may result in overtime. Our conclusion is that if this case is not reversed, very few employees will qualify for a weekly guaranty of pay and for even fewer of these will the employer desire to provide such a guaranty. Section 7(f) will become a dead letter.

The employees who need and warrant the special guaranty described in Section 7(f) are those described above who work a normal forty-hour schedule plus unpredictable overtime hours due to the special responsibilities their jobs entail. While these employees constitute a small part of the nation's total work force, they number in the thousands. These workers have a real need for the security afforded by a weekly guaranty. The satisfaction of this need achieves an important social goal. Employers should be encouraged to undertake the fixed expense of such a guaranty. The wrong resulting from denial of the benefits of Section 7(f) to such employees, pursuant to the decision of the Court of Appeals in this case, clearly justifies the grant of a writ of certiorari by this honorable court.

Respectfully submitted,

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA

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